

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE

FILED

October 16, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

SHIRLEY J. MYERS,)	
)	
Plaintiff/Appellee)	BRADLEY CHANCERY
)	
v.)	NO. 03S01-9710-CH-00126
)	
"CLASSIC EXPRESS")	HON. EARL H. HENLEY,
INCORPORATED and GUARANTEE)	CHANCELLOR
AND LIABILITY INS. CO.)	
)	
Defendants/Appellants)	

For the Appellants:

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For the Appellee:

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MEMORANDUM OPINION

Members of Panel:

Special Judge Charles D. Susano, Jr.
Senior Judge John K. Byers
Special Judge Joe C. Loser, Jr.

OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in a workers' compensation case. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

The trial court awarded the plaintiff death benefits for her husband's death, which he found arose out of and in the course of his employment with the defendant.

The defendant appeals and raises the following issue:

“Whether the trial court erred in its finding of compensability and awarding employee's wife death benefits for a heart attack sustained by employee?”

We find the trial court did not err in awarding the plaintiff death benefits and affirm the judgment of the trial court.

FACTS

Cecil Preston Myers, husband of the plaintiff, drove a tractor trailer truck for the defendant. His normal route was between Cleveland and Knoxville. His job did not require him to be gone overnight and did not require him to load or unload the truck.

On December 4, 1995, Mr. Myers hauled products from Cleveland to Morrow, Georgia, which is just south of Atlanta, and then he drove back home. This was the first time he had ever driven to the Atlanta area for the defendant. He drove this route on December 5, 1995 as well.

On December 6, 1995, the third day on this route, Mr. Myers was in Morrow when another truck hit his truck's fuel tank and ruptured it. He called his supervisor, Eddie Smith, to notify him about the accident. The Environmental Protection Agency cleaned up the spilled gas and made a report. The fuel tank was patched.

Meanwhile, Mr. Smith drove down to Morrow with a new truck. Mr. Smith testified that he was not mad at Mr. Myers and did not blame him for the damage to the truck. Mr. Smith said that he gave Mr. Myers three options: (1) he could drive the truck with the patched fuel tank; (2) he could swap trucks with Mr. Smith and drive back to Cleveland; or (3) he could stay in Morrow overnight until the new truck was unloaded. Mr. Myers decided to stay overnight with the new truck and Mr. Smith drove the truck with the patched fuel tank back to Cleveland.

On December 7, 1995, early the next morning, Mr. Myers was driving back to Cleveland when he hit a guardrail. He was found dead in his truck and it was determined that he died of a heart attack.

David E. Buteau and Cecil L. Walker, two truck drivers for the defendant, testified that they were in Morrow on December 6, 1995 and that they talked to Mr. Myers about his truck. They said that Mr. Myers was worried about the condition of his truck's fuel tank and concerned about the safety of driving his truck. They also testified that he did not seem anxious or upset and that he was cutting up with the other drivers. The plaintiff testified that her husband was an easygoing person and not high-strung but that he was meticulous about his job.

Arnold L. Hamilton, a truck driver for another company, testified that driving in Atlanta is very stressful under any circumstances and that safety concerns are part of the everyday stresses of a truck driver's job. Mr. Buteau, Mr. Walker, and Mr. Smith testified that they made the trip from Cleveland to Morrow the day before Mr. Myers' death and that there were no unusual road, traffic, or weather conditions.

Mr. Myers, age 57 at the time of his death, was thought to be in good health with two exceptions: (1) he had experienced high blood pressure since 1992 which he controlled with medication and (2) he had smoked cigarettes since he was a teenager and was smoking two packs per day for a few years prior to his death. Mr. Walker also testified that Mr. Myers complained of losing his breath and having stomach trouble a week before his death. On December 1, 1995, six days prior to his death, Mr. Myers saw his family doctor with complaints of chest discomfort for the past three weeks. At that time, the doctor recorded his blood pressure as 160/90, diagnosed him with gastroesophageal reflux disease (commonly known as heartburn), and gave him a prescription for Zantac.

MEDICAL EVIDENCE

_____Dr. Floyd James, a pathologist and medical examiner, testified by deposition. Dr. James performed an autopsy on Mr. Myers and wrote an autopsy report in which he concluded that Mr. Myers died of occlusion of his left anterior descending coronary artery (commonly known as a heart attack). In the autopsy report, Dr. James noted that scarring on Mr. Myers' heart indicated that he had suffered from two prior heart attacks. Further, Dr. James noted that there was narrowing above 50 percent in all three major vessels of Mr. Myers' heart and that there was narrowing near 90 percent in some of the sections.

_____Dr. James B. Burgin, an internist, also testified by deposition. At the request of the plaintiff's counsel, Dr. Burgin reviewed the medical records of Mr. Myers and assumed his working conditions within the past 24 hours of his death. Based on this information, Dr. Burgin opined that ". . . the stress of his job during the previous twenty-four (24) hours immediately preceding his heart attack actually triggered his heart attack. Precipitated it you might say." Dr. Burgin acknowledged the information in the autopsy report that Mr. Myers' arteries and blood vessels were 90 percent narrowed in some places. Dr. Burgin did not agree that it was fair to say that Mr. Myers could have sustained a fatal heart attack just as easily at any other place or time as while he was driving the truck.

_____Dr. Barry D. Silverman, a board certified cardiologist, testified by deposition after he reviewed the medical records and summaries of evidence surrounding the death of Mr. Myers. Dr. Silverman stated that Mr. Myers had severe coronary artery disease, as evidenced by his history of cigarette smoking, hypertension, strong family history of hypertension and atherosclerosis, and personal symptoms of chest discomfort shortly before his death. Dr. Silverman opined that Mr. Myers' work conditions in Morrow did not contribute to his heart attack and that he was a candidate for a heart attack whether he was on or off the job.

ANALYSIS

In order to be eligible for workers' compensation benefits, an employee must suffer "an injury by accident arising out of and in the course of employment which causes either disablement or death." Tenn. Code Ann. § 50-6-102(a)(5). The phrase "arising out of" refers to causation. The causation requirement is satisfied if

the injury has a rational, causal connection to the work. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997) (citations omitted).

Although causation cannot be based upon merely speculative or conjectural proof, absolute certainty is not required. Any reasonable doubt in this regard is to be construed in favor of the employee. We have thus consistently held that an award may properly be based upon medical testimony to the effect that a given incident “could be” the cause of the employee’s injury, when there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury. *Id.*

Tennessee law categorizes heart attack cases into two primary groups: “those that are precipitated by physical exertion or strain and those resulting from stress, tension, or some type of emotional upheaval.” *Bacon v. Sevier County*, 808 S.W.2d 46, 49 (Tenn. 1991). Of course, we must analyze Mr. Myers’ heart attack under the second category.

After a thorough review of heart attack cases which fit in the second category, the Supreme Court in *Bacon* set forth the rules of law that we must follow in our review of this record:

Viewing all of the foregoing cases as a whole, it is obvious that in order to recover when there is no physical exertion, but there is emotional stress, worry, shock, or tension, the heart attack must be immediately precipitated by a specific acute or sudden stressful event, rather than generalized employment conditions. *Sexton*, 785 S.W.2d at 816-17; *Helton*, 738 S.W.2d at 628-29; *Black*, 721 S.W.2d at 802-03; *Cabe*, 644 S.W.2d at 398-99; *Allied Chemical*, 578 S.W.2d at 372. We reiterate the rule again in this case that if the cause or stimulus of the heart attack is mental or emotional in nature, such as stress, fright, tension, shock, anxiety, or worry, there must be a specific, climatic [sic] event or series of incidents of an unusual or abnormal nature if the claimant is to be permitted a recovery. A premium should be placed upon specificity and clarity in identifying that which constitutes the “accident” and upon demonstrating that such accident is directly attributable to the employment.

Id. at 52.

Our review of the record persuades us that the plaintiff established causation by a preponderance of the evidence. The evidence shows that Mr. Myers’ working conditions during the 24 hours before his death were “considerably out of his routine,” to borrow the language of the trial judge.

On December 4, 5, and 6, 1995, Mr. Myers drove an unfamiliar and stressful route to Morrow, Georgia, which is just south of Atlanta. On the third day of this route, the fuel tank on his truck was ruptured when another truck hit it. Mr. Buteau

and Mr. Walker, truck drivers for the defendant, both testified that Mr. Myers was worried about the condition of his truck's fuel tank and concerned about the safety of driving his truck. Mr. Myers decided to stay in Morrow overnight until Mr. Smith's truck was unloaded. On his drive home early the next morning, Mr. Myers died of a heart attack.

In addition, we note that Dr. Burgin testified that the stress of Mr. Myers' job during the 24 hours immediately preceding his heart attack actually triggered or precipitated his fatal heart attack. Of course, we also recognize that Dr. Silverman testified that Mr. Myers' work did not contribute to his heart attack and that he was a candidate for a heart attack whether he was on or off the job. However, the trial court has the discretion to accept the opinion of one medical expert over another medical expert. *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990).

Based upon the lay and expert testimony, we find the plaintiff proved by a preponderance of the evidence that her husband's heart attack was produced by "a specific, climatic [sic] event or series of incidents of an unusual or abnormal nature." See *Bacon v. Sevier County*, 808 S.W.2d 46, 52 (Tenn. 1991).

Although the evidence of causation is not overwhelming in this case, we cannot say that the evidence preponderates against the conclusions of the trial court that Mr. Myers' work caused or contributed to his death and that his heart attack was compensable. This is a case where there is reasonable doubt regarding causation and thus we construe it in favor of the plaintiff, whose husband was employed by the defendant. See *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692-93 (Tenn. 1997).

The judgment of the trial court is affirmed and the cost of this appeal is taxed to the defendants.

John K. Byers, Senior Judge

CONCUR:

Charles D. Susano, Jr., Special Judge

Joe C. Loser, Jr., Special Judge

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)	NO. 96-146
APPELLEE)	
)	HON. EARL H. HENLEY,
v.)	CHANCELLOR
)	
CLASSIC EXPRESS, INC. AND)	S. CT. NO. 03S01-9710-CH-00126
GUARANTEE AND LIABILITY INS. CO.,)	
)	
APPELLANTS)	AFFIRMED

JUDGMENT

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well taken and should be denied; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the appellant, for which execution may issue if necessary.

It is so ordered.

PER CURIAM

